

**Brookline Board of Appeals  
April 21, 2016, 7:00 PM  
Public Hearing**

**333 Washington Street  
6<sup>th</sup> Floor Selectmen's Hearing Room**

**Board Members Present:** Mark Zuroff (Chairman), Christopher Hussey, Johanna Schneider  
**Staff Present:** Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Department)

**21 Kent Street**

**Proposal:** Convert from three-family to four-family dwelling and install additional parking  
**Zoning District:** G-2.0 (General Business)  
**Precinct:** 4  
**Board Decision:** Relief request **granted**, subject to conditions

**355 Buckminster Road (continued)**

**Proposal:** Construct mudroom addition in the side and rear yard, attaching the single-family dwelling to a two-car garage  
**Zoning District:** S-25 (Single-Family)  
**Precinct:** 14  
**Board Decision:** Relief request **granted**, subject to conditions

**791 Hammond Street (Beaver Country Day School)**

**Proposal:** Renovate existing library and construct a 22,500 square foot research and design center  
**Zoning District:** S-15 (Single-Family)  
**Precinct:** 15  
**Board Decision:** Relief request **granted**, subject to conditions

*Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.*

*Decisions shall be posted on the Town of Brookline website ([www.brooklinema.gov](http://www.brooklinema.gov)). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.*

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**Board Members Present** – Mark Zuroff (Chairman), Christopher Hussey, Johanna Schneider  
**Staff Present** – Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Dept.)

**7:00PM**

**21 Kent Street** – Convert existing three-family dwelling into a four-family dwelling and install three additional off-street parking spaces

Board Chairman Mark Zuroff opened the hearing and called case #2016-0009. Chairman Zuroff reviewed standard hearing procedure.

The Petitioner's Attorney, Jacob Walters (27 Harvard Street, Brookline, MA), waived the reading of public hearing notice for the record and introduced members of the 21 Kent Street condo association. Attorney Walters stated that the Petitioners are seeking to convert the existing basement space at 21 Kent Street to a fourth residential unit and to enclose a covered porch at the ground level to expand existing residential unit #1. Attorney Walters confirmed that this conversion triggers the need for additional off-street parking spaces and yard open space. Attorney Walters further stated that an accessory shed is proposed for the rear yard, which also triggers the need for setback relief.

Attorney Walters stated that all requested zoning relief for this proposal may be granted by the Board via special permit. The expanded open space requirement may be waived under Zoning By-Law Section 5.07 for dwellings located within business and industrial districts. All requested setback relief may be granted in accordance with By-Law Section 5.43 if counterbalancing amenity is provided. Attorney Walters added that special permit relief is also required for the conversion to the four-family dwelling use itself. The creation of one additional dwelling unit requires that 8 off-street parking spaces be provided, however the Planning Board recommended a reduction in parking to 7 total spaces in order to maintain some yard area at the rear of the property. Attorney Walters explained that the Petitioners are not opposed to this recommendation and the 7 parking spaces may be allowed by special permit under By-Law Section 6.01.2.a.

Attorney Walters concluded his comments by stating that Use #6 (Multiple attached dwelling of four or more units) requires that no more than 40% of the structures frontage may be dedicated to residential use at the ground level. Attorney Walters noted that the subject property has only been used for residential purposes and he believed the literal enforcement of this provision is impossible. Attorney Walters argued that this condition may be evaluated as a pre-existing nonconformity by the Board but he is also confident that the statutory requirements for a variance could be established if the Board finds that special permit relief is not applicable for this nonconformity.

Attorney Walters also informed the Board that the majority of abutting property owners have no objection to the proposal in its entirety, and the associated zoning relief.

Chairman Zuroff requested that the Petitioner address the statutory requirements for a variance. Attorney Walters stated that the subject property is one of two purely residential uses located within this immediate general business district. The property has been used for residential purposes and it is not feasible to incorporate commercial use at the ground level for both architectural and financial reasons. Additionally, Attorney Walters indicated that rental of the new basement residential unit would allow the condo association to complete needed structural repairs including foundation and roof repair.

Chairman Zuroff asked if the proposed shed is intended to store material/equipment that would otherwise be stored in the basement to be converted. Attorney Walters stated that the shed would be used for general equipment storage associated with yard work. Attorney Walters also stated that the shed is not an integral part of this proposal and could be eliminated if necessary.

Chairman Zuroff questioned whether or not the shed location or dimensions could be modified to comply with setback requirements.

Condo Association Member David Walsh stated that the shed dimensions are standard and the accessory structure would not be constructed on site. The shed cannot be located greater than 6 feet away the side and front lot line without adversely impacting site circulation. Additionally the accessory structure shall not be located within 6 feet of the principle structure. Mr. Walsh described the shed as a pre-fabricated structure that will match the existing siding of the principle structure.

Board Member Schneider asked if the immediate abutting neighbor at 17 Kent Street has stated opposition to the proposed conversion to a four-family dwelling. Attorney Walters confirmed that no formal opposition was submitted.

Board Member Hussey noted that there is a discrepancy between the side yard setback for the shed indicated on the site plan (2.4 feet) and the architectural plan. Mr. Walsh confirmed that the site plan that includes a 2.4 foot side-yard setback is indeed correct and the architectural site plan is intended to illustrate parking and landscaping rather than certified dimensions.

Board Member Schneider requested additional information regarding the ownership structure, particularly as it relates to the variance argument. Mr. Walsh stated that the Home Owners Association (HOA) is a trust that would rent the fourth residential unit. This ownership structure would allow the HOA to secure a loan for construction financing and collect future revenue to complete maintenance and repair for the entire structure. Essentially, the fourth unit would serve as collateral to support loan advances.

Board Member Hussey requested additional detail regarding the enclosed porch. Mr. Walsh stated that the porch is covered and serves as a common access point to the structure. The enclosed porch would allow the area to be used throughout the year and would increase living area for residential unit #1. The enclosure is incidental to the conversion to a fourth unit but does represent a gross floor area increase.

Chairman Zuroff requested additional detail of stormwater runoff and drainage issues that would arise from the expanded paved area located at the rear of the property.

Attorney Walters stated that there is no history of water damage to the subject property and adjacent properties located along Andem Place. Attorney Walters confirmed that the installation of

a trench drain is proposed for this parking area and the Petitioners are not opposed to the incorporation of permeable paving material for new off-street parking spaces.

Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Alice Driscoll McKay, of 9 Kent Street, stated concern about vehicular congestion and activity along Andem Place as a result of the additional residential unit. Ms. McKay stated that commercial and residential activity on this private way is continually challenging and may present safety and noise issues.

Chairman Zuroff requested that Zoning Coordinator, Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended approval of the fourth residential unit and extended parking. From a structural standpoint, the interior work requires no significant alteration and the Board highly supported the reduced rear parking count from 7 to 6 in order to improve vehicular maneuverability, maintain some of the rear yard open space, and allow for better snow removal. To confirm Mr. Walter's comment, the Planning Board did not feel that a literal enforcement of the Use #6 provision is appropriate in this instance because the structure has never included any retail activity at the ground level and unfortunately is a residential use located within a general business district.

Therefore, should the Board of Appeals find that the statutory requirements for a variance are met the Board recommended approval of the site plan by Robert Babcock, dated 12/16/15, floor plans and plans by Douglas Stefanov, dated 1/29/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicant shall submit a final site plan including all parking spaces and stall dimensions, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities and fencing, subject to review and Approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:  
1) a final site plan, stamped and signed by a registered engineer or land surveyor, 2) final floor plans and elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch deliver the opinion of the Building Department. Mr. Yanovitch concurred with the Planning Board in terms of the applicability and intention of requiring that no more than 40% of the ground level be designated for residential use. Mr. Yanovitch stated that the intent of this provision is to maintain ground floor commercial activity around Coolidge Corner, Harvard Street, Boylston Street, and other primary commercial corridors rather than this type of residential neighborhood located in close proximity to a commercial center. The conversion to the fourth unit is the trigger for the application of this 40% provisions. Mr. Yanovitch agreed that a literal enforcement effectively renders the proposal unfeasible and the Building Department has no objection to the relief as requested.

### ***Board Deliberation***

Board Member Schneider stated that the proposal is worthwhile. The location is useful in terms of access to public transportation and off-street parking. Ms. Schneider acknowledged that there is a high demand for reasonably affordable residential units and this proposal would contribute to the available housing stock in this active residential and commercial area. Ms. Schneider supported the request for various dimensional relief and believed that the Use #6 provision does indeed require a variance because the applicant is creating a new nonconformity for which no special permit relief is available. Ms. Schneider clarified that this request is a dimensional variance rather than a use variance and she was understanding of the fact that the long standing use of the property for residential purposes is not compatible with existing zoning requirements. Ms. Schneider stated that she found the Petitioner's variance argument to be compelling because it is an older structure that requires repair and the current basement space is underutilized. Ms. Schneider also believed that the uniqueness requirement is also satisfied as the structure is one of the only three-family structures located in the immediate area.

Chairman Zuroff concurred with Ms. Schneider's comments and reasoning on the need for a variance. Mr. Zuroff stated that the Board often favors relief that may be granted by a variance but, in this instance, the variance relief is the only appropriate option to grant necessary relief from the Use #6 regulation. Mr. Zuroff agreed that the hardship standard is satisfied and he was convinced that the 40% requirement was not intended to limit the expansion of an existing residential property, but rather to preserve existing commercial space along primary corridors. Mr. Zuroff also believed that not detriment is caused for abutting properties and the grant of a variance does not deviate from the intent of the zoning By-Law. Mr. Zuroff encouraged the applicant to modify the proposed shed so that it may comply with setback requirements and he requested that the Board consider and imposed condition that may require the use of permeable paving for all parking located along Andem Place. Mr. Zuroff also stated that he had no objection the waiver of one parking space, particularly because the subject property is located in close proximity to public transit.

Board Member Hussey agreed with the prior variance analysis and he was not troubled by the location of the proposed shed. Mr. Hussey stated support for the grant of zoning relief as requested.

The Board voted unanimously to grant special permit and variance relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the Applicant shall submit final floor plans, elevations, and a final site plan including all parking spaces, parking stall dimensions, and accessory shed setback dimensions, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, fencing, and paving materials, subject to review and Approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, 2) final floor plans and elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

**355 Buckminster Road** – Expand Mudroom, convert portion of basement to living area, and construct a permanent breezeway connecting dwelling to detached garage

Board Chairman Zuroff called case #2016-0013 and reviewed standard hearing procedure.

The Project architect Frederick Soule of Combined Energy Solutions located at 37 Ayer Road in Littleton, MA waived the reading of public hearing notice for the record and introduced property owner Sunaina Anand. Mr. Soule stated that the subject property is a Georgian Colonial single-family home located within the S-25 residential district. The lot is 37,310 square feet and the current detached garage does not comply with zoning requirements because it presents a 0 foot side yard setback. The Petitioner is proposing to finish a modest portion of basement space and expand an existing mudroom from 9.5' x 5.5' in size to 9.5' x 11.5' in size. These alterations result in a gross floor area increase of 594 square feet, and may be permitted by special permit under Zoning By-Law Section 5.22.3.b.1.c. Mr. Soule confirmed that special permit relief granted under this section must also be accompanied by design review at the Planning Board level. Mr. Soule noted that this proposal was heard by the Planning Board on two separate occasions in order to convert the breezeway itself from a retractable structure to a permanent structure at the request of the Planning Board. Mr. Soule further explained that the physical breezeway connection between the primary structure and the previously detached garage requires that the already noncompliant garage meet setback requirements for the principle structure rather than an accessory structure. Mr. Soule confirmed that the existing garage footprint will not be altered therefore special permit relief is requested for the noncompliant garage setbacks under Zoning By-Law Section 5.43. Mr. Soule stated that the breezeway would improve access to the garage, particularly during inclement weather, and the petitioner is proposing a robust landscaping improvement plan that includes plantings along the garage area to serve as counterbalancing amenity for the requested zoning relief.

Board Member Hussey requested additional detail regarding the breezeway siding material and noted a discrepancy between the gross floor area included on floor plans versus the submitted Planning Board report. Mr. Soule described the breezeway siding as open glass material to provide adequate natural light. Glass panels can be opened and closed on a track system based on the weather. Mr. Soule also confirmed that the resulting gross area following proposed modifications is 9,368 square feet.

Chairman Zuroff stated that all requested zoning relief may be permitted by special permit and confirmed that the statutory requirements for the grant of a variance are not required if the Board does find that the proposal is worthy of zoning relief.

Chairman Zuroff called for public comment in favor of, or in opposition to the Petitioner's proposal. Property owner, Sunaina Anand, stated that letters in support of these exterior modifications were submitted to the Board prior to this hearing. Ms. Anand also wished to state for the record that her neighbors are largely in support of this project and she is not aware of any abutter opposition at this time.

Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended approval of the new breezeway and slightly expanded mudroom. The connecting breezeway is not easily visible from surrounding properties to the north and west due to existing landscaping and large caliper trees. Mr. Rosa further stated that the applicant worked with the Planning Board to revise the breezeway

design with the intent to maintain an attractive streetscape and incorporate as much natural light as possible. Mr. Rosa confirmed that Board Members also supported proposed counterbalancing amenities in the form expanded landscaping, the installation of more decorative driveway paving, and the installation of a trench drain to control water runoff.

Therefore, the Planning Board recommended approval of the site plan by professional land surveyor Bruce Bradford of Everett M. Brooks Co. dated 4/8/2016 and the floor plans and elevations prepared by registered architect Frederick Soule of Combined Energy Systems, Inc. dated 4/8/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plan, floor plans, and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch deliver the opinion of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the requested relief and he confirmed that all setback relief may be granted by special permit if counterbalancing amenities are provided and all floor area relief may be granted by special permit if pertinent design review standards are satisfied.

### ***Board Deliberation***

Board Member Hussey stated that he was satisfied that all relevant standards for the grant of a special permit are met and he was in favor of the proposal.

Board Member Schneider concurred with Mr. Hussey and further stated that the subject lot is oversized and the minimal exterior alterations are well screened by existing and proposed landscaping. Ms. Schneider believed that the proposal was worthy of setback relief as requested and she referenced support for the project from abutting residents.

Chairman Zuroff concurred with Board Member comments and specifically referenced project compliance with the requirements for the grant of a special permit, in accordance with Zoning By-Law Sections 9.05 and 5.43.

**Unanimous Board grant of requested relief, subject to conditions stated for the record.**

**791 Hammond Street** – Renovate existing library and construct a 22,000 square foot addition (Research and Design Center).

Board Chairman Zuroff called case #2016-0025 and reviewed standard hearing procedure.

The Petitioner's attorney, Robert Allen of the Law Office of Robert Allen (300 Washington Street, Brookline, MA) waived a reading of public hearing notice for the record and stated that the subject property at 791 Hammond Street is used for Beaver Country Day School operations, which provides academic classes for 6<sup>th</sup>-12<sup>th</sup> grade. Attorney Allen stated that the Petitioner held a public meeting with neighboring residents to discuss the proposal as designed. The majority of residents did not oppose the design and location of the proposed addition however residents did express concern regarding potential traffic and parking related impacts. Attorney Allen acknowledged that these similar concerns have been expressed for years, particularly regarding the intersection between Hammond Street and Woodland Road. Attorney Allen further stated that the proposed addition is intended to enhance existing school service/programs rather than to increase student enrollment. The addition also represents an investment to improve overall handicap accessibility for the campus itself.

Attorney Allen confirmed that a daily police detail is provided and paid for by Beaver Country Day. This police detail is located directly at the intersection of Hammond Street and Woodland Road.

Project Architect, Kate Faulkner from NADAAA Architecture stated that renovation work would include improved ramp access, conversion of existing classrooms that are not handicap accessible, and a state of the art library workspace.

Attorney Allen stated that this educational use is protected under Massachusetts General Law, Chapter 40A, Section 3 (Dover Amendment) that provides relief from local regulations, particularly dimensional and design regulations, for education and religious uses. Attorney Allen further stated that the current proposal before the Board requires zoning relief for design review itself and off-street parking requirements associated with the gross floor area increase. Attorney Allen stated that 165 parking spaces are currently provided and the majority of students are under 15 years of age. Attorney Allen noted that Zoning By-Law Section 6.02.4.a provides for the waiver of up to 2/3 of total parking requirements for an institution that is primarily for children under 15, provided that adequate drop-off and pick-up facilities are provided. Additionally, the Board may grant a further reduction in this parking requirement after a finding that the standards for the grant of a special permit are met.

Attorney Allen stated that the proposed floor area increase would require 33 additional off-street parking spaces. Attorney Allen reiterated the fact that the proposed addition would not increase student enrollment or the number of faculty members. In order to provide 33 additional spaces, the Petitioner would be forced to pave over open space that would increase the amount of impervious surface at the site. Attorney Allen did not believe that this scale of parking increase is not necessary on this instance. Attorney Allen believed that the proposal before the Board meets the standards of the Dover Amendment and very few neighboring residents have expressed formal opposition to the project as a whole.



Board Member Johanna Schneider noted a discrepancy between Attorney Allen's description of current parking spaces and the number of parking spaces included in documents from the Planning Board. Ms. Schneider requested that the project architect confirm the number of existing parking spaces. Ms. Faulkner confirmed that a new site plan was drafted at the request of the Planning Department and she confirmed that 164 parking spaces are currently provided by the subject property.

Board Chairman Zuroff requested that the Petitioner discuss student enrollment and student access to school. Head of Beaver Country Day School, Peter Hutton, stated that approximately 450 students are enrolled in the school. Juniors and Seniors, particularly those not living in Brookline, are permitted to drive to school. Mr. Hutton stated that it is common for students to car pool and many students take public transportation to access school.

Board Member Schneider questioned whether or not a construction management plan would be required by the Building Department.

Ms. Faulkner stated that the Petitioner intends to start construction in June with an anticipated completion date for the September 2017 start of classes. Ms. Faulkner confirmed that a construction management plan would require approval by the Building Commissioner. The construction management plan also would include construction vehicle parking locations and access from Hammond Street to the north of Woodland Road.

Chairman Zuroff called for public comment in favor of, or in opposition to the Petitioner's proposal. No members of the public commented.

Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended approval of the research and design center. The Board generally favored the design, massing, and rear location of the addition. Mr. Rosa stated that it is common to see modern features incorporated for larger institutionally projects such as this to complement the existing structure rather than attempting to replicate somewhat historic features. The rear location also reduces overall impact on abutting residents and provides north facing natural light for art related classrooms. As far as the requested parking waiver, the Planning Board had no objection because the expanded gross floor area does not coincide with additional students, teacher, or vehicular activity.

Therefore, the Planning Board recommends approval of the requested special permits for the plans entitled " Beaver Country Day School, R and D Center" prepared by NADAA, dated January 8, 2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to review and approval by the Assistant Director for Regulatory Planning.
3. A construction management plan, including parking locations for construction vehicles, shall be submitted for review and approval of the Building Commissioner, with a copy to the Planning Department, before a building permit is issued.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief as requested and he believed that the flexibility provided by the Dover Amendment is applicable in this instance. Mr. Yanovitch further stated that many Massachusetts communities handle Dover Amendment proposals such as this through administrative or site plan review however Brookline consistently sends education/religious related proposals to the Board of Appeals for a determination of applicability and review in a public format. Mr. Yanovitch further supported the recommended condition requiring a construction management that specifically addresses "swing space", entry and egress from the public way, and public safety.

Board Member Hussey requested clarification the Engineering Department will review all project plans that address drainage and water runoff.

Mr. Yanovitch confirmed that the level of land disturbance required to construct the addition does require significant civil engineering review, particularly for drainage and utilities.

Chairman Zuroff stated that he supported the Petitioner's request for relief from parking and design requirements under the provisions of the Dover Amendment. Mr. Zuroff also commended the Petitioner for working closely with residents and various Town departments to reach a proposal that minimizes adverse impact as much as possible.

Board Members Hussey and Schneider concurred with Mr. Zuroff's comments.

**Unanimous Board grant of requested relief, subject to conditions previously stated for the record.**

**Hearing Closed.**